LONGMAN MALAYSIA SDN. BHD v. PUSTAKA DELTA PELAJARAN SDN. BHD.

[O.C.J. (Gunn Chit Tuan J.) July 14 to 17, 1986 & September 22, 1986]

[Kuala Lumpur – Civil Suit No. C 615 of 1981]

Copyright – Literary work – Translation – Infringement of copyright – Action for – Whether substantial part of textbook has been reproduced within Copyright Act, 1969, s. 8(1) – Whether done animo furandi.

This was an action by the plaintiff against the defendants for infringement of copyright in a textbook which was translated from a manuscript in English to Bahasa Malaysia. The Bahasa Malaysia version of the book entitled "Kursus Ulangkaji Rampaian Sains" (P1) was first published in 1979, and the reprint edition was published in 1980 or closer to 1979. Since 1979 the plaintiff has not assigned the copyright of P1 to anyone nor has a licence been granted by the plaintiff to anyone to publish or reproduce it.

The plaintiff claimed that the defendant had infringed the plaintiff's copyright and rights in the nature of copyright in P1 by publishing, distributing, selling without the licence of the plaintiff the work entitled "Kursus Lengkap Peperiksaan SPM Rampaian Sains" (D11) the general arrangements, language and features and errors of which are similar to the plaintiff's P1. Another copy of "Kursus Lengkap Peperiksaan SPM Rampaian Sains" (P12) was published by the defendant in 1981. P12 was the first reprint of D11.

Held: (1) P1 as a whole was original and protected by copyright under Copyright Act 1969 and a substantial part of P1 was copied not because of the physical amount of the reproduction but because of the substantial significance of that which was copied. What the court had to consider was the quality rather than the quantity of the pirated parts reproduced;

(2) the copyists of the relevant diagrams and tables were thereby relieved of the necessity of using their own skill and labour in reproducing those tables and diagrams and had, thereto, taken a free ride on the efforts of the original author and artist;

(3) the parts taken were done *animo furandi*, that is with an intention on the part of the copyists of saving themselves time and labour;

(4) the defendant's use of the parts taken into D11 was such as to compete with and affect the sales of the plaintiff's book (P.1), as a result of which the plaintiff had decided not to publish further editions of P1;

(5) an injunction should be issued to restrain the defendant, its directors, officers, servants or agents from, *inter alia*, reproducing without the licence of the plaintiff any copies of the work entitled "Kursus Lengkap Peperiksaan SPM Rampaian Sains – Terbitan Pertama – 1980" or any other reproduction of the plaintiff's literary works entitled "Kursus Ulangkaji Rampaian Sains;"

(6) the defendant must deliver up all infringing copies and plates in its possession, power, custody or control;

(7) an inquiry must be held as to damages or at the plaintiff's option an account of profits and payment of all sums found due upon such inquiry or account with interest thereon.

[*Per Curiam:* "... it was not contended by the defence that the translation was not entitled to copyright protection; but even if the contention had been advanced, I was prepared, with respect, to follow the ratio in that English case and to hold that a translation of a literary work is eligible to copyright in the country."]

Cases referred to:

(1) *Byrne* v. *Statist Company* [1914] 1 K.B. 622.
(2) *Scott* v. *Stanford* (1867) 3 Eq. Cas. 718, 720, 724.
(3) *Ladbroke (Football) Ltd.* v. *William Hill (Football) Ltd.* [1964] 1 W.L.R. 273, 276, 277, 283 & 293.

CIVIL SUIT.

S. F. Wong for the plaintiff.
Choong Yik Son for the defendant.

Cur. Adv. Vult.

Gunn Chit Tuan J.: This was an action by Longman Malaysia Sdn. Bhd., the plaintiff, for infringement of copyright in a textbook, which was translated from a manuscript in English to Bahasa Malaysia by three Malay translators who were commissioned by it. It was conceded by the defence that the plaintiff is a company under Malaysian laws. It is a limited company with a registered office at Wisma Damansara, Jalan Semantan, Kuala Lumpur, and carries on the business of publishers of literary works of both foreign and local authorship.

In this case the plaintiff in its statement of claim averred that it is the sole owner of the copyright and rights in the nature of copyright in a book entitled "Kursus Ulangkaji Rampaian Sains" (P.1). According to its first witness, Madam Koay Gaik Kooi (P.W.1) who is its publishing director now and was its publisher in the year 1979, she had a few editors working under her and co-ordinated their work. She told the court that the plaintiff first published P.1 in 1979. It is a book of general science for students preparing for the S.P.M. examination and contains three subjects, namely, chemistry, physics and biology. The manuscript of P.1 was presented to the plaintiff in the English language and the authors of the English manuscript were See Tho Weng Fong, John May and J.G.R. Ricks. They jointly wrote the three sections of the book.

After obtaining advice as to who were suitable translators, the plaintiff commissioned Puan

Zaleha Raub to translate the biology section. P.W.1 produced a copy of a letter appointing her (P.2) and Puan Zaleha after her appointment translated chapters 1, 4, 7, 10 and 23 of P.1. She was paid a fee of $850/- for the translation, and P.W.1 also produced her acknowledgement of the fees paid (P.3), and also a statement signed by Puan Zaleha stating that the copyright of her translation became the property of the plaintiff (P.4). One Encik Ahmad Buyong translated the chemistry section and documents relating to his appointment, acknowledgement of payment of fees and statement agreeing that the copyright of his translation belongs to the plaintiff were also produced (P.5, P.6 and P.7). The physics section was translated by Encik Jalal bin Mohd Nor, and again copies of his appointment letter, acknowledgement of payment of fees and signature on a statement agreeing that the copyright of his translation belongs to the plaintiff were produced (P.8, P.9 and P.10).

According to P.W.1 the Bahasa Malaysia version was first published in 1979, and the reprint edition was published in 1980 or closer to 1979. Since 1979 the plaintiff has not assigned the copyright of P.1 to anyone nor has a licence been granted by the plaintiff to anyone to publish or reproduce it.

Under cross-examination, P.W.1 confirmed that the three translators were not employees of the plaintiff but were only employees for piece-work. The aim was to employ them to translate the manuscripts as accurately as possible as the authors of P.1 were not competent in Bahasa Malaysia. The amount of fees paid to them depended on the amount of work done, *i.e.* according to the number of words translated and the biology section was the longest. In answer to a question by the court, the witness said that 50,000 copies of the first edition of P.1 were sold very quickly but sale of the reprint was badly affected and that was why it was decided not to publish further editions.

The second witness for the plaintiff was Chua Hong Koon (P.W.2). He said that he was employed by the plaintiff as an editor. He is an editor for mathematics and science, and when shown P.1 confirmed that he edited ten of the fifteen chapters whilst the other chapters were edited by his senior editor, the late Baharuddin Ahmad. This witness also identified a copy of "Kursus Lengkap Peperiksaan SPM Rampaian Sains" (D.11). He said that the publisher of D.11 was Pustaka Delta Pelajaran Sdn. Bhd. (the defendant) and the first edition was made available in 1980. Another copy of "Kursus Lengkap Peperiksaan SPM Rampaian Sains" (P.12) was also produced and identified by this witness. He told the court that it was published by the defendant in 1981. P.12 was the first reprint of D.11. Yet another book (P.13) was produced and identified by the witness as the first reprint of P.1.

In the plaintiff's statement of claim it was averred that the defendant had infringed the plaintiff's copyright and rights in the nature of copyright in P.1 by publishing, distributing, selling and by way of trade exposing, exhibiting and offering for sale without the licence of the plaintiff, the work entitled "Kursus Lengkap Peperiksaan SPM Rampaian Sains" the general arrangements, language and features and errors of which are similar to the plaintiff's P.1. Particulars of infringment were listed in an Annexure I to the statement of claim, and are as follows:

"LIST OF MAIN SIMILARITIES BETWEEN THE PLAINTIFFS' LITERARY WORK ENTITLED "KURSUS ULANGKAJI RAMPAIAN SAINS" AND THE DEFENDANTS" LITERARY WORK ENTITLED "KURSUS LENGKAP PEPERIKSAAN SPM RAMPAIAN SAINS."

	Plaintiffs' Literary Work Entitled "Kursus Ulangkaji Rampaian Sains."	*Defendants' Literary Work Entitled "Kursus Lengkap Peperiksaan SPM Rampaian Sains."*
1.	The division of chapters (15 chapters) and the wordings in pages vii to x.	The division of chapters (15 chapters) and the wordings in pages vii to x almost the same (especially in pages vii and viii).
2.	The table in page 26.	The table in page 19.
3.	The diagrams depicted in page 34 under Rajah 3.1 and 3.2.	The diagrams depicted in 27 under Rajah 3.1
4.	The table on page 57.	The table on page 53.
5.	The diagrams and labels in page 71 under Rajah 5.11.	The diagrams and labels in page 63 under Rajah 5.10.
6.	The diagrams and labels in page 71 under Rajah 5.12.	The diagrams and labels in page 64 under Rajah 5.11.
7.	The diagram in page 72 under Rajah 5.13.	The diagram in page 64 under Rajah 5.12.
8.	The diagram in page 73 under Rajah 5.14.	The diagram in page 65 under Rajah 5.13.
9.	The diagram in page 73 under Rajah 5.15.	The diagram in page 66 under Rajah 5.16.
10.	The diagram in page 90 under Rajah 6.18.	The diagram in page 83 under Rajah 6.17.

11. The table in page 122 under 8.3 – under the heading Keputusan for column C – "Lemak dan Minyak" – the statement 'Lemak dan minyak memberikan tanda lutsinar yang kekal lama.' The reprinted copy has the corrected version which reads 'lemak dan minyak memberikan tanda lutcahaya yang kekal lama.'	11. The table in page 107 under 8.2 – under the heading Keputusan for "Lemak dan Minyak" – the statement 'Lemak dan minyak memberikan tanda lutsinar yang kekal lama' is the same.
12. The diagram in page 137 Rajah 9.15.	12. The diagram in page 121 under Rajah 9.16.
13. The diagram in page 176 under Rajah 12.3 – in the first printing (in 1979 due to printing error one dot has been missed out on the second bar from the left (left diagram). The error has been subsequently corrected in the reprint.	13. The diagram in page 158 under Rajah 12.6 the dot has also been missed out on the second bar from the left (left diagram).
14. The diagram in page 177 under Rajah 12.7.	14. The diagram in page 162 under Rajah 12.13."

P.W.2 as well as Cik Goh Swee Bee (D.W.1) who is the science editor of the defendant now as well as in year 1979 were examined-in-chief, cross-examined and re-examined monotonously by counsel on both sides on each one of the main similarities between the plaintiff's P.1 and the defendant's D.11 as listed above.

Having heard their evidence as well as having examined both P.1 and D.11 and the relevant tables and diagrams in them, I found that both books were each divided into fifteen chapters followed by a section called Peperiksaan or Contoh Kertas Peperiksaan. The chapter headings are practically similar and some of the headings are also similar and gives one the impression that the sub-division of the Chapters in D.11 were copied from P.1. The number of topics were similar except for the choice of words. But P.W.1 conceded that the chapters in P.1 follow the syllabus set by the Ministry of Education (D.14). On this point I was prepared to accept the contention of the defence that the division of chapters in the defendant's book also followed the Ministry of Education's syllabus, and two textbooks called "Rampaian Sains Untuk Sekolah-Sekolah Menengah Tingkatan IV dan V" (D.15A and D.15B) published by the plaintiff in 1977 but the copyright of which belongs to the Ministry of Education. And that possibly explains why the defendant's book D.11 also has fifteen chapters. But when one looks at the relevant tables on pages 26, 57 and 122 of the plaintiff's book P.1 and then looks at the corresponding tables on pages 19, 53 and 107 of the defendant's book D.11, one finds that those tables in the defendant's book D.11 are remarkably similar and I was satisfied and found that they were copied from the corresponding tables in the plaintiff's book P.1. I have also examined not less than six times during the examination, cross-examination and re-examination of the two witnesses, P.W.2 and D.W.1, the relevant diagrams on pages 34, 71, 72, 73, 90, 137, 176 and 177 of the plaintiff's book P.1 and have compared them with the corresponding diagrams on pages 27, 63, 64, 65, 66, 83, 121, 158 and 162 of the defendant's book D.11. I was satisfied and found that the diagrams in the defendant's book D.11 were identical or very similar to the diagrams in the plaintiff's book P.1. In fact after the defendant realised that they had copied the diagrams in the plaintiff's book it changed those diagrams when they brought out their first reprint in 1981 (P. 12).

Under cross-examination P.W.2 also confirmed that the sales of the plaintiff's second edition dropped tremendously after the defendant had brought out their book in 1980. This witness claimed that the plaintiff was the first to prepare a revision course for students based on the Ministry of Education's syllabus marked D.14, and he also stated that whoever was the artist of the diagrams in the defendant's book D.11 did not go through the same mental exercise as their own artist when the latter first drew the relevant diagrams in the plaintiff's book. The witness also explained that the ideas expressed by the diagrams in the plaintiff's book could have been shown in other ways. The illustrations in the form of diagrams used in the plaintiff's book were essential and vital for without those illustrations, students buying the book would not understand it so well.

During cross-examination D.W.1 said that she was editor of the defendant's book D.11. She was then shown the cover of that book and then asked why her name was not printed on the cover. Her answer was that it is the policy of the defendant not to put the name of its in-house editor on their books. She, however, admitted that she was not in a position to speak for the author or authors of the manuscript of D.11. She agreed that D.11 was published after P.1 and that those authors of D.11 should have referred to all source materials first. She conceded that she was not in a position

to speak for the authors of the manuscripts of D.11 as to whether they had checked P.1 before preparing the manuscripts of D.11. She also agreed that the choice of words were the same in the illustrations in P.1 and D.11, and that the manner of their presentation could be different, but denied that the illustrations in D.11 have been taken from the plaintiff's book.

Mr. Choong Yik Son, counsel for the defendant, submitted that the issue in this case was whether the plaintiff's copyright in P.1 should be protected. He referred to section 4(2) of the Copyright Act, 1969, which reads as follows:

"4.(2) A literary, musical or artistic work shall not be eligible for copyright unless –

(a) sufficient effort has been expended on making the work to give it an original character; and

(b) the work has been written down, recorded or otherwise reduced to material form."

and submitted that there was no evidence of the amount of skill involved in producing P.1. Counsel then referred to section 8(1) of the said Act regarding the nature of copyright in literary, musical, artistic works and cinematograph films which is as follows:–

"8.(1) Copyright in a literary, musical or artistic work or in a cinematograph film shall be the exclusive right to control the doing in Malaysia of any of the following acts, namely the reproduction in any material form, the communication to the public and the broadcasting, of the whole work or a substantial part thereof, either in its original form or in adaptation."

and stressed on the words "a substantial part thereof." He submitted that a few illustrations or diagrams reproduced would not fall within the above sub-section of the Act. Having pointed out that the defendant's book has over 366 diagrams whereas the plaintiff's book has only 304 diagrams, counsel also stated that the defendant's work has 491 objective questions, whereas the plaintiff's work has only 341 objective questions, and contended that the defendant's book was different from the plaintiff's book. He therefore submitted that the few similar diagrams do not amount to a substantial part of the plaintiff's book but conceded that whether it was a substantial part or not is a question of fact.

Mr. S.F. Wong, counsel for the plaintiff, pointed out that no copyright in Malaysia shall subsist otherwise than by virtue of the Copyright Act, 1969 (section 3). He submitted that the plaintiff's copyright in the Bahasa Malaysia version comes within the above-quoted section 4(2)(a) of the said Act. Counsel then referred to the meaning of "literary work" in section 2(1) of the said Act which is as follows:

" 'literary work' means, irrespective of literary quality, any of the following, or works similar thereto:

(a) novels, stories and poetical works;

(b) plays, stage directions, film scenarios and broadcasting scripts;

(c) textbooks, treaties, histories, biographies, essays and articles;

(d) encyclopaedias, dictionaries and other works of reference;

(e) letters, reports and memoranda;

(f) lectures, addresses and sermons,

but does not include official texts of a legislative, administrative and legal nature nor official translations of such texts."

He pointed out that the plaintiff's book P.1 is a textbook and submitted that the defendant had reproduced a substantial part of the plaintiff's book within the meaning of the said section 8(1) of the Act. As regards the meaning of reproduction, counsel referred to the definition of that expression in section 2(1) of the Act which reads as follows:

" 'reproduction' means the making of one or more copies, and includes, in the case of an artistic work, a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form, and reference to 'reproducing' a work shall be construed accordingly;"

He also referred to the meaning of the word "copy" in the said section 2(1) which is as follows:

" 'copy' means a reproduction of a work in written form, in the form of a recording or cinematograph film, or in any other material form;"

Next, counsel referred to section 12(1) of the said Act regarding the first ownership of copyright which is as follows:–

"12(1). Copyright conferred by sections 5 and 6 of this Act shall vest initially in the author:

Provided that notwithstanding the provisions of subsection (6) of section 13 of this Act, where a work –

(a) is commissioned by a person who is not the author's employer under a contract of service or apprenticeship, or

(b) not having been so commissioned, is made in the course of the author's employment,

the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting such transfer."

and stated that the copyright in P.1 had been transferred to the plaintiff by the three translators and belongs to the plaintiff who had commissioned its translation. Counsel also stated that the plaintiff was claiming copyright under section 5 of the said Act which confers copyright on every work eligible for copyright by virtue of citizenship or residence of the author being a qualified person, that is to say –

"(a) an individual who is a citizen of, or is a permanent resident in, Malaysia; or

(b) a body corporate constituted and vested with legal personality under the laws of Malaysia and established in Malaysia."

Here it has been pointed out above that the defence had conceded at the commencement of trial that the plaintiff is a body corporate constituted and vested with legal personality under the laws of Malaysia, and is therefore a qualified person eligible for copyright conferred by virtue of section 5 of the said Copyright Act, 1969.

Mr. Wong then referred to *Byrne* v. *Statist Company*[1] in which case Bailhache J. held that a translation may be the subject of copyright. In our present case it was not contended by the defence that the translation was not entitled to copyright protection; but even if that contention had been advanced, I was prepared, with respect, to follow the *ratio* in that English case and to hold that a translation of a literary work is eligible for copyright in this country.

Counsel also stated that one must look at the time, labour and skill involved in translating the book, *i.e.* that it was not copied from someone else. He submitted that section 4 of the Copyright Act has been complied with and then referred to subsection 2(b) of the said section 4 of the Act and stated that textbooks included diagrams and tables which have been "recorded or otherwise reduced to material form."

Another case referred to by counsel was *Scott* v. *Stanford*[2] in which the plaintiff had published statistical returns of all coal imported into London, and the defendant in giving statistics of the whole country, had copied from the plaintiff's working to the extent of one-third of the whole of defendant's work, at the same time acknowledging the source from which his information was derived. It was held by Sir Page Wood, V.C. that, having regard to the quantity and matter of the information which had been republished without the exercise of any defendant's thought and labour, and the prejudice to the plaintiff in having the sale of his work superseded, the plaintiff was entitled to an injunction. His Lordship said in that case as follows:

"The general principles guiding the Court in cases of this description could hardly be found better stated than in the following words, used by Mr. Justice Story in *Polsom* v. *Marsh* cited in Mr. Palmer Phillips' *Treatise on Copyright:*– 'In short, we must, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the material used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work.'

No man is entitled to avail himself of the previous labours of another for the purpose of conveying to the public the same information, *although he may append additional information to that already published.*" (Emphasis supplied).

Counsel then submitted that the defendant had reproduced a substantial part of the plaintiff's book P.1. He also referred to *Ladbroke (Football) Ltd.* v. *William Hill (Football) Ltd.*[3] in which case the plaintiff bookmakers expended substantial effort and used considerable skill and judgment in arriving at an attractive assortment of bets. These were embodied in their football coupons. The defendant bookmakers copied portions of the coupons and were held to have infringed the plaintiff's copyright by the House of Lords. Mr. Wong then referred the court to the following passages in the speeches of Lord Reid, Lord Evershed and Lord Pearce respectively in that case:

"... Broadly, reproduction means copying, and does not include cases where an author or compiler produces a substantially similar result by independent work without copying. And, if he does copy, the question whether he has copied a substantial part depends much more on the quality than on the quantity of what he has taken. One test may be whether the part which he has taken is novel or striking, or is merely a common place arrangement of ordinary words or well-known data. So it may sometimes be a convenient short cut to ask whether the part taken could by itself be the subject of copyright. But, in my view, that is only a short cut, and the more correct approach is first to determine whether the plaintiffs' work as a whole is "original" and protected by copyright, and then to inquire whether the part taken by the defendant is substantial." (Lord Reid).

"It is not in doubt that what amounts in any case to substantial reproduction within the meaning of sections 6 and 49 of the Copyright Act again cannot be defined in precise terms but must be a matter of fact and degree. It will, therefore, depend, not merely on the physical amount of the reproduction, but on the substantial significance of that which is taken." (Lord Evershed).

"Did the defendants reproduce a substantial part of it? Whether a part is substantial must be decided by its quality rather than its quantity. The reproduction of a part which by itself has no originality will not normally be a substantial part of the copyright and therefore will not be protected. For that which would not attract copyright except by reason of its collocation will, when robbed of that collocation, not be a substantial part of the copyright and therefore the courts will not hold its reproduction to be an infringement. It is this, I think, which is meant by one or two judicial observations that "there is no copyright" in some unoriginal part of a whole that is copyright. They afford no justification, in my view, for holding that one starts the inquiry as to whether copyright exists by dissecting the compilation into component parts instead of starting it by regarding the compilation as a whole and seeing whether the whole has copyright. It is when one is debating whether the part reproduced is substantial that one considers the pirated portion on its own."

(Lord Pearce).

Mr. Wong concluded his address by referring to pages 168 *et seq* of The Law of Intellectual Property by Staniforth Ricketson on the meaning of the phrase "substantial part." The learned author of that textbook suggested that the determination of what is a substantial part might involve delicate questions of degree. But nevertheless, there are a number of factors which may assist in this process. According to the learned author the originality of the part taken may be a very relevant consideration. If the part taken represents the application of a high degree of skill and labour on the part of the author, it may be regarded as substantial although comparatively slight in quantitative terms. On the other hand, where the part taken involves little originality it may not be regarded as substantial even though quantitatively it may form quite a large part of the work.

A second relevant factor, according to the learned author, is the object or purpose which lies behind the taking and the use which is made of the part taken. Thus, if the purpose of the copyist is the same as that of the author of the original, this may lead the court to hold that the part taken is substantial. This is particularly so, where the copyist is thereby relieved of the necessity of using his own skill and labour and is enabled to take a free ride on the efforts of the original author. Thus it seems the courts will readily reach the conclusion that a substantial part has been taken when this is done *animo furandi, i.e.* with an intention on the part of the copyist to take from the original work for the purpose of saving himself time and labour. The third relevant factor, according to the learned author, is whether the defendant's use of the part taken will be such as to interfere with the sales of the original or to compete with it. In this case Mr. Wong submitted that the illustrations and tables are a very vital part of the plaintiff's book P.1, and the skill was involved in producing the substantial part which was copied in the defendant's book (D.11) in which there was no mental effort on the part of the defendant, and I might add, on the part of the authors and artist or artists of the manuscript of D.11.

In considering the question of whether a substantial part of the plaintiff's book, P.1 was copied in the defendant's book, D.11, I therefore, with respect, adopted and followed what their Lordships in the case of *Ladbroke (Football) Ltd.* v. *William Hill (Football) Ltd.*[3] had suggested was the more correct approach. I found that the plaintiff's book P.1 as a whole was original and protected by copyright under our Copyright Act, 1969. And in considering whether what has been copied amounted to a substantial part of P.1 within the meaning of section 8(1) of the same Act, I found as a matter of fact and degree that it was a substantial part thereof not because of the physical amount of the reproduction but because of the substantial significance of that which was copied. I bore in mind that what the court had to consider was the quality rather than the quantity of the pirated parts reproduced. Bearing in mind and adopting what the learned author of the Law of Intellectual Property has suggested were factors which might assist in this process, I found, firstly, that although the parts copied might not represent the application of a high degree of skill and labour on the part of the author or artist of P.1, yet it did, as submitted by Mr. Wong, involve a certain amount of skill on the part of the artist in producing those diagrams. As regards the second relevant factor, I found that the object or purpose of the author or artist of D.11 in copying these tables and diagrams was the same as that of the author and artists of P.1, that is to say to make their books more readible and comprehensible to students taking the SPN examination. In doing so, I was of the view that the copyist of the relevant diagrams and tables were thereby relieved of the necessity of using their own skill and labour in reproducing those tables and diagrams and had, therefore, taken

a free ride on the efforts of the original author and artist. I also reached the conclusion that the parts taken were done *animo furandi,* that is with an intention on the part of the copyists of saving themselves time and labour. Lastly, there was also evidence accepted by me to prove that the defendant's use of the parts taken into D.11 was such as to compete with and affect the sales of the plaintiff's book (P.1), as a result of which the plaintiff had to decide not to publish further editions of P.1. I therefore, agreed with Mr. Wong and found as a matter of fact that the diagrams and tables are very vital parts of the plaintiff's book, P.1 and that a substantial part thereof had therefore been reproduced in the defendant's book, D.11.

To summarize therefore, in conclusion, there was the plaintiff's book P.1 in which copyright subsisted. Apart from an averment in the defendant's statement of defence, this fact was not really disputed by the defence during the trial of this action. And having heard the evidence adduced by the plaintiff, I found that copyright did subsist in the plaintiff's book P.1 under our Copyright Act, 1969. The plaintiff has also adduced evidence which was accepted by me to prove that it owns the copyright of the book P.1 by virtue of the relevant provisions of the said book. The only serious issue was whether there has been an infringement of the plaintiff's copyright in P.1, namely the reproduction in the defendant's book D.11 of a substantial part of the plaintiff's book P.1, within the meaning of section 8(1) of the Act. Having regard to the evidence adduced and having considered the submissions of counsel on both sides, I was satisfied and found as a fact that there has been a reproduction of a substantial part of the plaintiff's book P.1 in the defendant's book D.11. Before delivering judgment I indicated to counsel for the plaintiff that as the evidence adduced showed that there was only infringement of the plaintiff's book P.1 in the defendant's book D.11 and not in their first reprint (P.12) the injunction prayed for by the plaintiff and which the Court intended to grant would only cover the defendant's book D.11 and not their first reprint D.12. I therefore directed that judgment be entered for the plaintiff against the defendant in accordance with the prayers for relief in the plaintiff's statement of claim dated June 2, 1981, as amended as follows:

1. I ordered that an injunction do issue, to restrain the defendant whether by itself, its directors, officers, servants or agents or any of them or otherwise howsoever from doing the following acts or any of them that is to say:

"(i) reproducing without the licence of the Plaintiff any copies of the work entitled "KURSUS LENGKAP PEPERIKSAAN SPN RAMPAIAN SAINS – TERBITAN PERTAMA – 1980" or any other reproduction of the Plaintiff's literary works entitled "KURSUS ULANGKAJI RAMPAIAN SAINS" or authorising any of the acts aforesaid or otherwise infringing the Plaintiffs copyright in the said literary works entitled "KURSUS ULANGKAJI RAMPAIAN SAINS;"

(ii) selling by way of trade, exposing or offering for sale or distributing for the purpose of trade without the licence of the plaintiffs any copies of the said literary works entitled "KURSUS LENGKAP PEPERIKSAAN SPM RAMPAIAN SAINS – TERBITAN PERTAMA – 1980" or any other reproductions of the plaintiffs' said work entitled "KURSUS ULANGKAJI RAMPAIAN SAINS" and from authorising any of the acts aforesaid;

(iii) converting to their own use by publishing, selling, offering for sale, exposing or distributing for the purpose of trade the literary work entitled "KURSUS LENGKAP PEPERIKSAAN SPM RAMPAIAN SAINS – TERBITAN PERTAMA – 1980" or of plates used or intended to be used for making the same."

2. I ordered the defendant to deliver up all infringing copies and plates in its possession, power, custody or control.

3. I ordered an inquiry as to damages or at the plaintiff's option an account of profits and payments of all sums found due upon such inquiry or account with interest thereon; and

4. I also ordered payment of costs by the defendant.

Order accordingly.

Solicitors: *Shearn Delamore & Co.; Choong Yik Son.*